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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,429

02/06/2006

Yasuhiro Hayashi

032213 M 041

8438

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7590

11/14/2007

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EXAMINER

JAGAN, MIRELLYS

ART UNIT

PAPER NUMBER

2855

MAIL DATE

DELIVERY MODE

11/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,429

Applicant(s)

HAYASHI ET AL.

Examiner

Mirellys Jagan

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 is/are allowed.
- 6) ☒ Claim(s) 4,6-8,10-15 and 17 is/are rejected.
- 7) ☒ Claim(s) 9 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 8, 10, 11, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,892,448 to Fujikawa et al [hereinafter Fujikawa].

Fujikawa discloses an electronic clinical thermometer for measuring a body temperature of an organism, which comprises:

- a temperature measuring element (101) for detecting a temperature;
- a display device (102) for displaying the temperature measured by the temperature measuring element;
- an operation switch (104) for predetermined operation; and
- a vibration generator (103) for notifying that the electronic clinical thermometer is in a predetermined state;

wherein the electronic clinical thermometer has a width and a thickness, and a longitudinal length that is longer than the width and the thickness; the operation switch and the vibration generator are arranged on one side of the display device in the longitudinal direction of the electronic clinical thermometer; the display device, the

operation switch, and the vibration generator are arranged in the longitudinal direction of the electronic clinical thermometer in the order of temperature measuring element, display device, operation switch, and vibration generator; the electronic clinical thermometer has a circuit board on which given electronic components are mounted; the electronic clinical thermometer has an inside frame (interior of housing) for holding the vibration generator, circuit board, and display; the operation switch is a switch for starting temperature measuring operation; and the vibration generator is actuated before measurement is started after the operation switch is operated (see figure 7; column 2, lines 50-54 and 61-64; column 3, lines 14-16; column 4, lines 4-5 and 13-17; column 6, lines 65-67; column 7, lines 20-25 and 32-36; and column 8, lines 23-31 and 36-40).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 4, 6, 7, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujikawa in view of JP 01018031 to Watanabe et al [hereinafter Watanabe].

Fujikawa discloses a thermometer having all of the limitations of claims 4, 6, 7, and 12-15, as state above in paragraph 2, except for explicitly disclosing that the inside frame of the thermometer has a battery storage and holding portion for storing and holding a battery; the battery storage portion is located on the side opposite the temperature measuring portion with respect to the vibration generator; the circuit board is located in a position apart from the vibration generator so as not to overlap the vibration generator on a plane in the thickness direction thereof; the inside frame has a first support portion and a second support portion for supporting the vibration generator in the vertical direction of the thermometer; the thermometer has a sheath case for holding the inside frame; the first support portion or the second support portion is supported by the inner surface of the sheath case; and the sheath case has a front portion located so that a display panel of the display device can be visually confirmed and a rear portion situated at the back of the front portion, and the first support portion or the second support portion is supported by the inner surface of the rear portion of the sheath case.

However, Watanabe discloses an electronic thermometer having an inside frame with a battery storage portion for storing a battery. The battery storage portion is located on the side opposite a temperature measuring portion with respect to a vibration

generator. A circuit board, on which electronic components are mounted, located in a position apart from the vibration generator. The inside frame (25) holds the vibration generator, circuit board, and a display device. The inside frame has a first support portion and a second support portion for supporting the vibration generator in the vertical direction of the electronic clinical thermometer so that it improves the volume of the sound made by the vibration generator. The thermometer has a case (11) for holding the frame, and one of the support portions is supported by the inner surface of the case. The case has a front portion located so that the display is visible, and a rear portion that is located at the back of the front portion. One of the support portions is supported by an inner surface of the rear portion of the case. The structure of the thermometer provides improved sound and waterproofing (see abstract, and figures 1 and 2).

Therefore, referring to claims 4 and 12-15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer of Fujikawa by providing a battery and its storage portion, inside frame, and sheath case as taught by Watanabe in order to provide improved sound and waterproofing.

Referring to claims 6 and 7, although Fujikawa does not explicitly state the location of the circuit board relative to the vibration generator, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer of Fujikawa by locating the circuit board as claimed by Applicant since the location claimed by applicant is considered to be nothing more than a design choice because the particular location is nothing more than one of numerous locations in the thermometer that a person having ordinary skill in the art at the time the

invention was made would have been able to provide in order to accommodate all of the thermometer parts inside the thermometer.

Allowable Subject Matter

6. Claim 5 is allowed.
7. Claims 9 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The Examiner's reasons for allowance for claims 5 and 9 are stated in the Office action dated 11/2/06.
9. The following is a statement of reasons for the indication of allowable subject matter for claim 16:

The prior art of record does not disclose or suggest the following in combination with the remaining limitations of the claims:

An electronic clinical thermometer for measuring a body temperature of an organism, wherein only the second support portion is supported by the inner surface of the sheath case.

Response to Arguments

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references disclose an electronic thermometer having a vibration generator:

U. S. Patent 4,846,583 to Yamamoto
U. S. Patent 6,394,648 to Tseng
U. S. Patent 6,890,096 to Tokita et al
U. S. Patent Application Publication 2005/0117626 to Kobayashi et al
JP 06241912 to Motai

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247.

The examiner can normally be reached on Monday-Friday from 12PM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MJ

November 9, 2007

**GAIL VERBITSKY
PRIMARY EXAMINER**